

WALTER M. SORENSEN

IBLA 77-343
77-360

Decided October 21, 1977

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offers W-58741 and W-58911.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases:
First Qualified Applicant

If a noncompetitive oil and gas lease is issued for a particular parcel of land, it must be issued to the first qualified applicant. Under the simultaneous drawing procedures, a defective entry card must be rejected.

2. Oil and Gas Leases: Applications: Drawings

Failure to complete properly any information required on a simultaneous oil and gas lease drawing entry card renders the card defective and requires rejection of the offer based upon the mandatory requirements in 43 CFR 3112.2-1(a) that the card be "signed and fully executed." This requirement is strictly applied, and the omission of the day of the month from the date on the card renders the card defective.

APPEARANCES: Ted J. Gengler, Esq., Poulson, Odell & Peterson, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Walter M. Sorensen appeals from the March 30, 1977, and the May 10, 1977, decisions of the Wyoming State Office, Bureau of Land Management (BLM), rejecting two simultaneous oil and gas lease drawing entry cards for failure to complete the date of signature. Entry card W-58741 (IBLA 77-343) was filed for a parcel on the February 1977 drawing list and was dated "2/77." Entry card W-58911 (IBLA 77-360) was filed for a parcel on the March 1977 drawing list and was dated "3/77." Both cards received first priority in the respective drawings. The State Office rejected the cards because "the day of month has been omitted." Upon appellant's request, the cases have been consolidated for decision.

Appellant presents several arguments as to why his versions of the dates are adequate. He argues first that the Board incorrectly decided Helen E. Ferris, 26 IBLA 382 (1976), which affirmed the rejection of an entry card dated "Mar. 76." He argues that although "date" in its ordinary and legal meaning refers to day, month and year, this should not be construed to void a document containing a date without all three elements if the date as given provides the necessary information without confusion.

Appellant's second argument is a two-fold attack on the interpretation of the requirement in 43 CFR 3112.2-1(a) that an entry card must be "signed and fully executed." First, appellant asserts that this regulation does not clearly require month, day and year as the date. Appellant compares this to Mary I. Arata, 4 IBLA 202 (1971), where the Board allowed a rubberstamped signature on an entry card because the regulation did not specify how the card was to be signed. Second, appellant asserts that the phrase "fully executed" should be interpreted in accordance with general contract law as requiring the card to be filed with BLM. Appellant contends that under this analysis, the date is irrelevant to the "execution."

Finally, appellant argues that he should be granted equal protection, in law, to that granted in Kathryn J. Eckles, 28 IBLA 390 (1977), where the Board discussed what constitutes a reasonable period for dating an entry card prior to filing. Appellant argues there is no showing here that by dating the card for an entire month, he was beyond the scope of any reasonable period of time for predating an entry card.

We have considered appellant's argument, and for the reasons stated below, find them unpersuasive. We therefore affirm the decision of the BLM State Office.

[1] If a noncompetitive oil and gas lease is issued for a particular parcel of land, it must be issued to the first qualified applicant. 30 U.S.C. § 226(c) (1970). Three cards are drawn for each numbered parcel to determine priorities. 43 CFR 3112.2-1(a)(3). The two junior cards have intervening third party rights and a defective entry card must be rejected. Southern Union Production Co., 22 IBLA 379, 382 (1975). If the successful drawees are unqualified to receive the lease for any reason, the drawn parcel is to be included in a subsequent list of lands available for filing under the simultaneous drawing procedure. 43 CFR 3112.5-1.

[2] The Board has consistently held that failure to complete properly any information required on a simultaneous oil and gas lease drawing entry card renders the card defective and requires rejection of the offer under 30 U.S.C. § 226(c) (1970). E.g., Martin M. Sheets, 32 IBLA 7 (1977) (state where parcel located omitted or incorrect); Ernest T. Squires, 30 IBLA 288 (1977) (parcel prefix omitted); Melvin C. Hudson, 28 IBLA 359 (1977) (failure to sign); Raymond F. Kaiser, 27 IBLA 373 (1976) (zip code omitted); Grace M. Williams, 26 IBLA 232 (1976) (return address omitted); John R. Mimick, 25 IBLA 107 (1976) (date omitted); Joseph A. Winkler, 24 IBLA 380 (1976), aff'd Civil No. C76-127K (D. Wyo. May 19, 1977) (ambiguous regarding corporate status); Ray Flamm, 24 IBLA 10 (1976) (card postdated). These decisions are all predicated on the requirement in 43 CFR 3112.2-1(a) that entry cards be signed and "fully executed," on the notice published at 39 F.R. 24523 (1974), when the entry card form was changed to the present single card, that "failure to complete any part of the card will disqualify the applicant," and on the special simultaneous drawing procedures which do not permit amendments of a drawing card to cure a defect discovered when the card is drawn as the winning card. With the number of entry cards filed on particular parcels often numbering in the hundreds and occasionally extending into the thousands, strict adherence to each requirement establishes fairness and uniformity for all participants.

Appellant argues that legal interpretation of dating a document does not require day, month and year, citing Gray v. Reorganized School District R-4 of Oregon County, 356 S.W.2d 55 (Mo. 1962). In that decision, the Missouri Supreme Court did allow less than a full date in upholding an election notice, but first stated that the "ordinary meaning," "legal significance," and "popular as well as technical meaning" of "date" is day, month and year. See Helen E. Ferris, supra at 385 (Stuebing, A.J., concurring). We do not find this

argument persuasive to warrant overruling Helen E. Ferris, supra, as urged by appellant. We note Ferris was later upheld by the Board in Robert J. Burkhill, 28 IBLA 76 (1976) (entry card dated with month and day but not year).

Appellant's comparison of no regulatory definition of "date" with Mary I. Arata, supra, where the Board held that the regulations did not limit how an entry card might be signed, creates a false parallel. In Arata, the Board was interpreting the "signed" half of "signed and fully executed." In fact, the regulation, 43 CFR 3112.2-1(a), is silent on all the information required by the entry cards except that applicants must use the form approved by the Director of BLM. The decision in Arata stands for the principle that if the regulations do not specify the form of the information, a commonly accepted method of placing it on the entry card will be recognized. That decision does not mean that the information may be incomplete.

Appellant's companion argument that "fully executed" refers only to signing and filing the entry card has been implicitly rejected by the Board many times. The Board has held that completion of the entry card, *i.e.*, "fully executed," is a mandatory requirement of the regulation and therefore an entry card without a proper date must be rejected. *E.g.* Robert J. Burkhill, supra; Helen E. Ferris, supra; Herbert W. Schollmeyer, 25 IBLA 393 (1976); John R. Mimick, supra. As the United States District Court for the District of Wyoming stated regarding rejection of an entry card showing an ambiguous corporate status:

[T]he Court concludes the Secretary neither acted in an arbitrary or capricious fashion, nor did he abuse his discretion in rejecting plaintiff's offer for failure to comply with mandatory federal regulations. To the contrary, the Secretary's failure to abide by his own mandatory regulations would have been arbitrary and capricious; * * *.

Winkler v. Kleppe, Civil No. C76-127K (D. Wyo. May 19, 1977).

Appellant's demand that he be afforded equal protection under law based on Kathryn J. Eckles, supra, is inapposite. Although the factual situation is similar, in that both cases involve the date the particular applicant signed the entry card thereby certifying his or her qualifications to hold a lease, the Eckles case was concerned solely with the timeliness of the certification. Here, appellant failed to complete the date, not only calling into question the timeliness of the certification but also violating the requirement of full execution. Accordingly, we cannot apply the 10-day rule of certification to appellant as we applied it in Eckles.

In a supplemental brief, appellant has made additional novel and creative arguments to support his position that the regulation should not be applied strictly here. He asserts, there is a discrepancy between regulation 43 CFR 3112.2-1(a), referring to "Simultaneous Oil and Gas Entry Card" and the February 1976 Form 3112-1 designated "Simultaneous Oil and Gas Drawing Entry Card." He contends that a similar strict interpretation of the regulation would also void the Department's use of that form. We cannot agree with these and other contentions made by appellant. They are not relevant to the problem raised in this case nor to the reasons for the Department's consistent and longstanding strict application of the regulations to oil and gas lease applications. What may seem nit-picking and excessively strict to one applicant may appear essential to a conflicting applicant who has fully met the requirements, with any other result deemed unfair and contrary to the statutes and regulations.

Appellant has requested an oral argument. The contentions made have been very thoroughly and well presented in briefs to this Board. We see no useful purpose to be served in granting the request. Therefore it is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

